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August 22, 2007

RECEIVED

Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

AUG 22 2007
PUBLIC SERVICE
COMMISSION

RE: Surcharge Interim Options

Dear Ms. O'Donnell:

On behalf of Louisville Gas and Electric Company and Kentucky Utilities Company (the "Companies"), I would like to thank the Commission for the opportunity to participate in the meeting held at the Commission's offices on August 16, 2007, to discuss the import of the recent Franklin Circuit Court ("Circuit Court") order and opinion.¹ The Companies further appreciate the opportunity to submit these comments concerning the three Interim Options the Commission Staff presented at the August 16 meeting.

Of the three Interim Options presented at the meeting, the Companies strongly support the first option, which is for the Commission to proceed with cases as usual, pending the final outcome of the appeals process. This option places the Circuit Court opinion in the proper legal context and affords the opinion appropriate legal standing; namely, that it is an order adjudicating the claims of the Attorney General regarding a particular issue, the legality of Accelerated Mains Replacement Program surcharge tariff ("AMRP"), and a particular party, Duke Energy Kentucky ("DEK"), that is currently stayed pending appeal. The first Interim Option is also the only option that preserves in place and continues in full effect cost recovery and surcredit mechanisms that have long proven to be cost-effective and beneficial to customers and utilities. In contrast, the Companies emphatically object to the other two Interim Options. The second option is to suspend consideration of all "automatic" recovery mechanisms, and the third is to continue to process cases involving such recovery mechanisms, but make any prospective recoveries subject to refund. Both of these options have the effect of wrongfully elevating dicta in the Circuit Court opinion to the level of a holding, and erroneously broadening

¹ Order and Opinion of the Franklin Circuit Court, Case No. 06-CI-269, entered Aug. 1, 2007 ("FCC order and opinion").

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the application of the order from the particular party and issue before the court to utilities in general, all of which promises to create significant cost and disruption for utilities and their customers. The appeal of the FCC opinion and order by the Commission and DEK is clear evidence that both believe it to be erroneous. The Commission should not compound the error by applying dicta from the opinion to the utility industry at large, and particularly not while the case is on appeal and the effect of the judgment stayed. Moreover, any application of the second or third Interim Options would require full due process for affected utilities in the form of formal notice, comment, and full-blown evidentiary hearing procedures under KRS Chapter 278. The informal discussions at the Commission last week, the orders issued yesterday², and the written comments submitted today do not begin to satisfy the express legal requirements of KRS Chapter 278 or the due process requirements under the Kentucky and United States Constitutions.

The full reasoning for the Companies' support of the first Interim Option and their opposition to the other two begins with an axiom of law: a court has the power to decide only the issues before it, and only with respect to the parties to a proceeding before it, in which proceeding the properly joined parties have enjoyed full due process rights. This axiom is codified in Kentucky Rule of Civil Procedure 54.01, "Definition and construction [of judgments and costs]":

A judgment is a written order of a court adjudicating a claim or claims in an action or proceeding. A final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding . . .

Notably, the Circuit Court order and opinion purposefully describes itself as a "judgment",³ and thus applies only to the rights of the parties to the proceeding. In this case, only DEK and the Commission were parties to the Circuit Court action, and the validity of DEK's AMRP was the only issue before the court. The Circuit Court opinion, if higher courts uphold it, will apply only to DEK and the Commission -- but only to the Commission insofar as it will hold further proceedings on remand with respect to DEK and its AMRP. The FCC opinion and order does not bind any other utility, nor does it purport to require the Commission to act with respect to any other utility, customer, or person with respect to any other issue. Only the first Interim Option, which allows the Commission and other parties to conduct proceedings as usual, is legally correct and appropriately accounts for the true import and effect of the FCC opinion and order.

² *In the Matter of: An Examination Of The Application Of The Fuel Adjustment Clause Of Louisville Gas and Electric Company From November 1, 2004 Through October 31, 2006*, Case No. 2006-00510 (August 21, 2007); *In the Matter of: An Examination Of The Application Of The Fuel Adjustment Clause Of Kentucky Utilities Company From November 1, 2004 Through October 31, 2006*, Case No. 2006-00509 (August 21, 2007);

³ Circuit Court Opinion and Order at 8.

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The second and third Interim Options erroneously elevate to the level of a holding the Circuit Court opinion's dicta. The language and reasoning in the opinion to the effect that the PSC possesses no necessary or implied authority to create rate mechanisms not explicitly sanctioned by statute are pure *obiter dicta*. Kentucky's courts have long stated that though they may say many things in their opinions, only what is necessary to their ultimate holdings is binding authority. In the case of the Circuit Court's opinion, the two holdings were (1) KRS 278.509 is constitutionally infirm and (2) the Commission does not otherwise possess the authority to authorize an AMRP for DEK. All statements in the opinion broader than those holdings simply are not binding, but choosing either the second or third Interim Option would erroneously treat the opinion's dicta as binding, and binding on non-parties to the proceeding. The Commission should refuse to engage in such error.

Moreover, the Circuit Court does not have the authority to overturn decades-long interpretations of the Commission's authority under KRS Chapter 278 to create mechanisms such as fuel adjustment clauses and gas cost adjustment clauses, which interpretations have long been approved by Kentucky's courts and which therefore have *stare decisis* effect. As the enclosed tariffs show, the Companies have had in place fuel adjustment clause mechanisms for over seventy years, and gas cost adjustment mechanisms in place for over fifty years, all approved by the Commission and implicitly, if not explicitly, approved by Kentucky's courts. Cases such as *National Southwire*⁴ and *City of Southgate*⁵ clearly demonstrate that the Commission has the authority the Circuit Court opinion's dicta claims the Commission does not have. Such long-standing interpretations of law, both by the Commission and appellate courts, are not to be overturned lightly. And they certainly are not to be overturned by a Circuit Court. As the Kentucky Court of Appeals said of its own authority:

[T]he primary purposes of the intermediate appellate tribunal were to afford every litigant the right of an appeal and to correct any errors committed at the trial level. Conversely, it is not our function to establish new rules of law or enunciate changes in Kentucky jurisprudence. . . . If we, or any one of us, disagree with an established rule of law, then we point out its fallacy but simultaneously adhere to it.⁶

It is therefore clear that the Circuit Court's holding and dicta concerning the Commission's authority are in error, and that the Circuit Court simply lacks the power to

⁴ *National-Southwire Aluminum Co. v. Big Rivers Electric Corp.*, 785 S.W.2d 503 (Ky. App. 1990) (upholding as lawful separate variable rates for smelters based on the fluctuating price of world aluminum, explaining the breadth of the "just and reasonable" statutory standard, and citing Supreme Court opinions on result reached, not methodology used, that is controlling).

⁵ *Public Service Comm'n v. Cities of Southgate and Highland Heights*, 268 S.W.2d 19 (Ky. 1954) (PSC authority necessarily implied to approve utility transfer, although no statute specifically so stating was in effect at the time).

⁶ *Tucker v. Tri-State Lawn & Garden, Inc.*, 708 S.W.2d 116, 118 (Ky. App. 1986).

“establish new rules of law or enunciate changes in Kentucky jurisprudence.” The Companies are confident that the Kentucky Court of Appeals will correct the Circuit Court’s error during the appeal the Commission and DEK are now prosecuting. In the meantime, it would be an additional legal error for the Commission to act as though the Circuit Court’s opinion is final by resorting to the second or third Interim Option. Only the first Interim Option respects the Commission’s continuing and long-held authority, and gives the authority of Kentucky’s higher courts their proper *stare decisis* effect.

Turning from the merits of the Circuit Court opinion to due process concerns, any exercise of the second or third Interim Option will require full notice, comment, and evidentiary hearing procedures, as required for any change in rates, and such procedures will be necessary for all affected utilities. The type of informal discussion and comment process the Commission is currently pursuing, though laudable, is not sufficient to satisfy the due process requirements of either the second or third Interim Option. As the Commission knows, jurisdictional utilities’ tariffed rate structures and mechanisms have the force of law once they are final; the FAC and GSC mechanisms are filed and final rates, therefore changing them in any way requires full and formal proceedings that afford all affected parties due process. These informal discussions in no way satisfy the statutory and constitutional requirements for changing rates prospectively.⁷

Perhaps even more fundamentally, absent an explicit command to do so by the Commonwealth’s highest court, the Commission ought not to abandon or curtail rate mechanisms of such long-standing and beneficial effect to both customers and utilities. So long as there is no such authoritative decree, the Commission should refuse to surrender its time-honored rights, responsibilities and authority to protect customers and ensure cost recovery and a fair rate of return to utilities through successful rate mechanisms such as fuel adjustment clauses, gas cost adjustment clauses, and various surcredits. The Companies will fully assist the Commission in protecting this authority through an *amicus curiae* brief to the appellate court, as well as through any other appropriate means. But in the meantime, the only Interim Option consistent with the law is the first approach.

With respect to the first four points for jurisdictional utilities contained in the *Interim Option Comment Guidelines*, the relevant information for the Companies is on file with the Commission. Concerning the final three points, although the Companies wish to avoid engaging in too much speculation, they anticipate that pursuing any Interim Option other than the first will likely have immediate and extreme negative credit market, corporate securities, and operational impacts upon the Companies and other jurisdictional utilities. Implementation of any Interim Option other than the first will cause the Companies’ to seek to include their fuel costs in base rates and to terminate their two merger surcredits and three Value Delivery Surcredits. Kentucky’s utilities have long benefited from steady and reasoned regulation by the

⁷ Nor do the procedures suggested in the Commission’s orders of August 21, 2007 in Case Nos. 2006-00509 and 2006-00510 comport with substantive or procedural due process or the requirements of KRS Chapter 278.

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Commission, of which careful stewardship the credit and securities markets are well aware. Any precipitous or preemptive Commission action in the form of implementing Interim Option two or three could be seen by such financial observers as increasing the Companies' credit, securities and operational risk profiles and a cause for concern going forward. Customers also benefit from steady and reasoned regulation by the Commission, and any such action to implement Interim Option two or three will be of great concern due to the lack of certain and predictable rates. Businesses and low-income customers are likely to be impacted the most by such inadvisable and unnecessary actions.

The Companies further recommend that the Commission refrain from pursuing the legislative task force proposal until at least the Kentucky Court of Appeals has rendered its opinion. For all the legal reasons discussed above, the Companies are confident that, if given a full opportunity to do so, the appellate court will appropriately address the matters at issue in the Circuit Court opinion and ultimately find the Circuit Court to be in error. Convening a legislative task force at this time may negatively influence the appellate court's deliberative process, however, because the task force may be seen by the higher courts as an implicit admission by the Commission and the participants that it does not possess the necessary or implied power to create fuel adjustment clauses, gas cost adjustment clauses, or surcredit mechanisms. Of course, if the Commission determines to proceed with a legislative task force, the Companies do wish to participate and have designated me to act as their representative thereon.

Again, the Companies appreciate the opportunity to provide these comments to the Commission. If the Companies can be of any further assistance to the Commission in this matter, please do not hesitate to contact me at your first convenience.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kendrick R. Riggs". The signature is fluid and cursive, with the first name "Kendrick" and last name "Riggs" clearly distinguishable.

Kendrick R. Riggs

KRR/ec
Enclosure (1)

LG&E / KU

FAC / GSC Tariffs

STANDARD RATE SHEET

FORM 123-B-341

1st Rev. SHEET NO. 33 OF P. S. C. of Ky. No. 1
 CANCELLING Original SHEET NO. 33 OF P. S. C. of Ky. No. 1

LOUISVILLE GAS AND ELECTRIC COMPANY

STANDARD RATE SCHEDULE

LPb-1

Optional Combined Light and Power Rate

Electric

Effective In: All territory served.Classification: Commercial customers.

Availability: Available to customers whose entire lighting and power requirements are purchased under this schedule and who guarantee a minimum demand of ten (10) kilowatts for billing purposes.

Rate:Demand Charge

First	10 kilowatts	of maximum demand	@ \$3.00	per Kw.	per mo.
Next	40	" " " "	@ 2.00	" " " "	" "
Excess	"	" " " "	@ 1.50	" " " "	" "

Energy Charge

First	500 kilowatt hours	per month	@ 4.00¢	per Kwh.
Next	1,500	" " " "	@ 3.50	" "
Next	18,000	" " " "	@ 2.00	" "
Next	20,000	" " " "	@ 1.50	" "
Next	20,000	" " " "	@ 1.20	" "
Next	40,000	" " " "	@ 1.00	" "
Excess	"	" " " "	@ 0.75	" "

Determination of Maximum Demand:

The maximum demand for the month shall be the highest average load in kilowatts occurring during any fifteen (15) minute interval in the month as shown by maximum demand instruments (or otherwise determined as hereinafter provided) and where light and power service are measured through separate meters the highest fifteen (15) minute demands for each character of service shall be combined for billing purposes.

The company reserves the right to assess power demands (a) when the customer's total connected power load as indicated by manufacturers' rating does not exceed fifty (50) horsepower, and (b) in the case of power equipment with intermittent and/or rapidly fluctuating operating characteristics such as X-Ray machines and elevator motors. Such assessed demands shall apply to the entire power load and be determined on the following basis:

When the connected load consists of only one motor or other piece of power apparatus the maximum demand shall be determined on the basis of 85% of the connected load.

When the connected load consists of more than one motor or other piece of power apparatus (exclusive of fractional horsepower motors or devices) the maximum demand shall be determined on the basis of 75% of the connected load.

DATE OF ISSUE June 10, 1935

MONTH DAY YEAR

EFFECTIVE July 1, 1935

MONTH DAY YEAR

ISSUED BY T. B. WILSON, President

LOCAL MANAGER

Louisville, Kentucky

ADDRESS

APPROVED BY Public Service Commission of DATE June 28, 1935
Kentucky

STANDARD RATE SHEET

FORM 120-B-341

1st Rev. SHEET NO. 33.1 OF P. S. C. of Ky. No. 1
 CANCELLING Original SHEET NO. 33.1 OF P. S. C. of Ky. No. 1

LOUISVILLE GAS AND ELECTRIC COMPANY

STANDARD RATE SCHEDULE

LPb-1

Optional Combined Light and Power Rate

Electric

(Continued)

Determination of Maximum Demand (Cont.)

Assessed power demands, determined as above, shall be added to the lighting demand for billing purposes.

The billing demand for any one month shall in no case be less than ten (10) kilowatts nor less than fifty per cent (50%) of the maximum demand determined during the eleven preceding months.

Minimum Monthly Charge:

The monthly demand charge shall not be less than provided above, whether or not energy is used.

Prompt Payment Discount:

A discount of five per cent (5%) on the first \$50.00 and one per cent (1%) on the excess will be allowed for payment of bills within ten (10) days from date thereof.

Power Factor:

This rate allows an average lagging power factor of not less than eighty-five per cent (85%). Suitable accessory equipment shall be installed by the customer where necessary to avoid a lower power factor.

Coal Clause:

The net monthly bill, computed according to the above schedule shall be increased or decreased at the rate of two-tenths mill (\$.0002) per kilowatt hour on that portion of the customer's monthly consumption in excess of 10,000 kilowatt hours for each one cent (1¢) by which the cost of coal (F.O.B. cars at the Company's Louisville steam plants) used during the second preceding month is more or less, respectively, than eleven cents (11¢) per million Btu. Such increase or decrease shall not be made unless the cost of coal is greater than twelve cents (12¢) or less than ten cents (10¢) per million Btu., and shall then be made in direct proportion to the difference from the base price of eleven cents (11¢) per million Btu.

Term of Contract:

One Year.

DATE OF ISSUE June 10, 1935
 MONTH DAY YEAR

EFFECTIVE July 1, 1935
 MONTH DAY YEAR

ISSUED BY T. B. WILSON, President
 LOCAL MANAGER

Louisville, Kentucky
 ADDRESS

APPROVED BY Public Service Commission of Ky. DATE June 28, 1935

STANDARD RATE SCHEDULEFuel Clause

Applicable to: All rate schedules in this Tariff other than Rate OL and Rate REC-2.

The monthly amount computed in accordance with the provisions of each of the rate schedules to which this fuel clause is applicable shall be increased or decreased at the rate of .103 mill (.0103¢) per kilowatt-hour of monthly consumption for each one cent per million Btu by which the average cost of fuel consumed during the second preceding month is more or less respectively than 33.8¢ per million Btu. The average cost of fuel consumed during any month shall be determined by dividing the total charges to the Fuel expense accounts during such month by the number of millions of Btu consumed; provided, however, that such average cost will be reduced to the extent that fuel purchased at higher than average cost is consumed in the production of energy for sale to other electric utility companies and is used as the basis of charging such other electric utility companies. The increase or decrease shall be made in direct proportion to the difference from the base fuel cost of 33.8¢ per million Btu, including differences of fractional parts of a cent.

This rate became effective on January 18, 1973, subject to further order by the Public Service Commission of Kentucky.

With meter readings
taken on and after

DATE OF ISSUE July 27, 1972

DATE EFFECTIVE September 18, 1972

ISSUED BY B. Hudson Milner

President

Louisville, Kentucky

NAME

TITLE

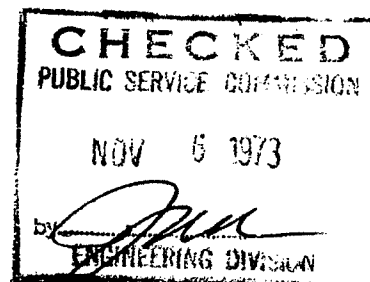
ADDRESS

Filed with Public Service Commission of Kentucky July 27, 1972

STANDARD RATE SCHEDULEFuel Clause

Applicable to: All rate schedules in this Tariff other than Rate OL.

The monthly amount computed in accordance with the provisions of each of the rate schedules to which this fuel clause is applicable shall be increased or decreased at the rate of .103 mill (.0103¢) per kilowatt-hour of monthly consumption for each one cent per million Btu by which the average cost of fuel consumed during the second preceding month is more or less respectively than 33.8¢ per million Btu. The average cost of fuel consumed during any month shall be determined by dividing the total charges to the Fuel expense accounts during such month by the number of millions of Btu consumed; provided, however, that such average cost will be reduced to the extent that fuel purchased at higher than average cost is consumed in the production of energy for sale to other electric utility companies and is used as the basis of charging such other electric utility companies. The increase or decrease shall be made in direct proportion to the difference from the base fuel cost of 33.8¢ per million Btu, including differences of fractional parts of a cent.



DATE OF ISSUE October 26, 1973 DATE EFFECTIVE January 18, 1973
ISSUED BY B. Hudson Milner President Louisville, Kentucky
NAME TITLE ADDRESS

Issued by authority of an Order of the PSC of Ky. in Case No. 5709 dated 5-24-73

LOUISVILLE GAS AND ELECTRIC COMPANY

Purchased Gas Adjustment Clause
 For Changes in Wholesale Cost of Natural Gas

Applicable to: Gas rate schedules G-1, G-2, G-6, and G-8.

Purchased Gas Adjustment Clause:

(Conformed excerpt from an order issued by the Public Service Commission of Kentucky on November 26, 1957, in Case No. 3300)

The rates authorized herein (Case No. 3300 - November 26, 1957) are based upon the wholesale cost of gas to the Applicant (Louisville Gas and Electric Company) as computed upon rates of its wholesale suppliers then currently in effect under Federal Power Commission tariffs for interstate business or under wholesale tariffs of this Commission. For the purpose of this purchased gas adjustment clause, these rates shall be considered as the base rate for purchased gas. In the event there is any change in this base rate, either increase or decrease, the Applicant (Louisville Gas and Electric Company) shall within thirty days from the time it receives notice of the proposed change file with this Commission the following information:

- (1) A copy of the Federal Power Commission tariff effecting the change in the base rates and a statement relative to the effective date of such proposed change.
- (2) A statement setting out the details of gas purchased under the provisions of the base rate for the previous twelve months showing billing under the base rate and under the proposed revised rate applicable to this service.
- (3) A balance sheet as of the end of the twelve months period and a statement of operating expenses and revenues in the same detail as reported to this Commission in the Utility's Annual Report.
- (4) A forecast showing the estimated gas purchases from all of the Utility's contract suppliers for the next twelve months period together with an estimate of the cost thereof.
- (5) Such other information as this Commission may request for a proper determination of the purchased gas adjustment.

Upon receipt of this information this Commission will review the effect of the revised base rate on the operations of the Applicant (Louisville Gas and Electric Company) and will prior to the effective date of the revised base rate, but not less than thirty days from date of the filing of the above prescribed information, issue its Order setting out the purchased gas adjustment that the utility shall apply to its rates and/or such refunds as may be proper.

The maximum amount of the adjustment so prescribed shall not produce revenue adjustments based upon the actual preceding twelve months period, greater than the difference between the purchased gas billed at the then existing rate and the purchased gas billed at the revised rate.

DATE OF ISSUE November 27, 1957 Meter readings taken on DATE EFFECTIVE and after Dec. 26, 1957

ISSUED BY G. R. Armstrong President Louisville, Kentucky
NAME TITLE ADDRESS

Issued by authority of an order of the Public Service Commission of Ky., dated Nov. 26, 1957

Lexington Utilities Company,
Lexington, Kentucky.

Original
Dated .9/20/34

RIDER NO. 1

APPLICABLE To Rate C.

AVAILABILITY OF SERVICE

Applying to untransformed light and incidental power where the total connected load is 100 K.W. or more, the regular light rate shall apply thereto. The quantity discount shall extend up to, but not beyond, fifty-seven (57) per cent.

In consideration of the above rates, the consumer agrees to pay for the cost of transformers, poles, wires and other equipment on the consumer's premises and the cost of installation thereof. The type and size to be specified by the Lexington Utilities Company. The Lexington Utilities Company will furnish all necessary metering equipment without cost to the consumer.

COAL CLAUSE

The rate is increased or decreased eleven hundredths of a mill (\$.00011) per kilowatt-hour for each five cents increase or decrease above or below \$2.40 per ton in cost of coal f.o.b. company's station.

Electricity for the above will be sold under the above schedule to any consumer who has signed the Company's agreement for electric service for a term of five (5) years, embodying the TERMS AND CONDITIONS of the Company.

Service under this schedule is available only to customers who were served under this schedule on March 1, 1940, and only at the premises occupied by the customer on that date. If service hereunder is disconnected at the customer's option, or for violation of Rules and Regulations, it shall not again be available under this schedule.

Lexington Utilities Company,
Lexington, Ky.

Original
Dated 9/20/34

RIDER NO. 2

APPLICABLE

To Rate C

AVAILABILITY OF SERVICE

Applying to untransformed power and mixed lighting where the total connected load is over one hundred and twenty-five (125) horse power and less than two hundred (200) horse power, in which the connected load in lighting shall not exceed fifteen (15) percent of the total connected load of both lighting and power combined, the regular power rate shall apply thereto. The quantity discount shall extend up to, but not beyond, fifty-eight (58) percent.

In consideration of the above rates and discounts, the consumer agrees to pay for the cost of transformers, poles, wires and other equipment installed on or near the consumer's premises including the erection thereof and all labor and teaming furnished, which material and apparatus shall be used for the purpose of supplying the lighting and power requirements of the consumer only at the location hereinabove specified. The type and size of transformers are to be specified by the Company. The Company will furnish all necessary metering equipment without cost to the consumer.

COAL CLAUSE

The above rate will be increase or decreased one-tenth of a mill (\$.0001) per kilowatt hour for each five cents (\$.05) increase or decrease above or below two dollars and fifty cents (\$2.50) per ton in cost of coal of two thousand (2,000) pounds, placed in the coal bunkers in the Company's power station at Lexington, Kentucky.

Electricity for the above will be sold under the above schedule to any consumer who has signed the Company's agreement for electric service for a term of five (5) years, embodying the terms and conditions of the Company.

Service under this schedule is available only to customers who were served under this schedule on March 1, 1940, and only at the premises occupied by the customer on that date. If service hereunder is disconnected at the customer's option, or for violation of Rules and Regulations, it shall not again be available under this schedule.

RIDER NO. 3

APPLICABLE

Applicable to Rate C.

In consideration of the consumer purchasing untransformed power and incidental lighting, with a total connected load of not less than three hundred (300) kilowatts wherein one of the power units is a synchronous motor of not less than two hundred (200) horse power, the power rate for the first two (2) rate steps shall apply to this contract, and the three and four tenths (3.4) cents rate per kilowatt-hour shall apply to all electric energy used per month on the third rate step, up to and including thirty-three and one-third ($33 \frac{1}{3}$) per cent load factor, based on the consumer's installation as hereinafter determined. For all energy used per month in excess of thirty-three and one-third ($33 \frac{1}{3}$) per cent load factor, up to and including fifty (50) per cent load factor, the consumer shall pay a net rate of one and one-eighth ($1 \frac{1}{8}$) cents per kilowatt-hour. For all energy used per month in excess of fifty (50) per cent load factor, the consumer shall pay a net rate of one (1) cent per kilowatt-hour.

LOAD FACTOR

The load factor shall be figured on the basis of seven hundred and twenty (720) hours in the month, arrived at on the basis of the kilowatt monthly demand as figured under maximum demand as outlined in the Lexington Utilities Company's standard contract for power service, made a part hereof.

QUANTITY DISCOUNT

The maximum quantity discount shall extend up to, but not beyond fifty-eight (58) per cent.

LOAD FACTOR DISCOUNT

In consideration of the untransformed power rate with synchronous motor, the consumer shall be entitled to a load factor discount which shall be determined as follows:

When the consumer shall have a monthly load factor of not less than twenty-four and one-third ($24 \frac{1}{3}$) per cent or greater,

Service under this schedule is available only to customers who were served under this schedule on March 1, 1940, and only at the premises occupied by the customer on that date. If service hereunder is disconnected at the customer's option, or for violation of Rules and Regulations, it shall not again be available under this schedule.

When the consumer shall have a monthly load factor of not less than twenty-four and one-third ($24 \frac{1}{3}$) per cent or greater, shall be fifty-eight (58) and eleven (11) per cent. The said quantity and added discounts as above when earned shall be allowed only on the first three steps under this rate.

(continued)

Lexington Utilities Company,
Lexington, Ky.

Original
Dated 9/20/54

RIDER NO. 3 (continued)

COAL CLAUSE ADJUSTMENT

The rates, as outlined in this contract, are based on a cost of coal to the Lexington Utilities Company of \$2.50 per ton of 2,000 pounds f.o.b. bunkers in the company's power station at Lexington, Kentucky.

The consumer's net bill shall be increased or decreased one tenth of a mill (\$.0001) per kilowatt-hour for each 5 cents increase or decrease above or below \$2.50 per ton of 2,000 pounds in the cost of coal f.o.b. bunkers in the company's power station at Lexington, Kentucky, but said adjustment shall be made every six months in the manner hereinafter set forth.

At the end of the first six months period of this contract, the company will furnish the consumer an itemized statement showing the average cost of coal per ton for the preceeding six months period and a statement of the number of kilowatt-hours used by the consumer during the same preceeding six months period and the coal adjustment shall be made on the cost of coal as shown and on the number of kilowatt-hours consumed during said preceeding six months period, at the coal adjustment rate hereinabove mentioned.

If the average cost of coal during the preceeding six months period has exceeded \$2.50 per ton f.o.b. bunkers in the company's power station in Lexington, Kentucky, then the consumer will pay the company within ten days the amount arrived at on the basis of the above coal clause adjustment.

If the average cost of coal during the preceeding six months period has been less than \$2.50 per ton f.o.b. bunkers in the Company's power station in Lexington, Kentucky, then the company will pay the consumer within ten days the amount arrived at on the basis of the above coal clause adjustment.

In consideration of the above rates, the consumer agrees to pay the cost of transformers, poles, wires and other equipment installed on or near the consumer's premises, which transformers, poles, wires, etc., are used for furnishing power and incidental lighting to the consumer. The cost of installing the above equipment shall be included therein. The type and size of transformers for the consumer's requirements shall meet the approval of the Lexington Utilities Company.

Electricity for the above purpose will be sold under the above schedule to any consumer who has signed the company's agreement for electric service for a term of five (5) years, embodying the terms and conditions of the company.

COMBINED LIGHTING AND POWER SERVICE

RATE - LP

AVAILABILITY

This rate schedule is available for secondary or primary service on an annual basis for lighting and/or heating and/or power.

It is optional with the Customer whether service will be billed under this schedule or the Commercial Service schedule and/or the General Power schedule. The Customer, having selected one schedule, will continue to be billed under such schedule for not less than 12 consecutive months, unless there should be a material and permanent change in the Customer's use of service.

RATE

Maximum Load Charge

\$2.00 per month per kilowatt for the first 50 kilowatts of the maximum load in the month, but not less than \$10.00 per month.

\$1.75 per month per kilowatt of maximum load in excess of 50 kilowatts load in the month.

Plus an Energy Charge

3 cents net per kilowatt-hour for the first 1,000 kilowatt-hours used per month.

2 cents net per kilowatt-hour for the next 2,000 kilowatt-hours used per month.

1.5 cents net per kilowatt-hour for the next 7,000 kilowatt-hours used per month.

1 cent net per kilowatt-hour for the next 90,000 kilowatt-hours used per month.

.8 cents net per kilowatt-hour for all in excess of 100,000 kilowatt-hours used per month.

DETERMINATION OF MAXIMUM LOAD

The load will be measured and will be the average kilowatt load used by the Customer during the 15-minute period of maximum use during the month.

MINIMUM MONTHLY BILL

The minimum monthly bill will be the maximum load charge established during the 11 preceding months, and in no event less than \$10.00.

DELAYED PAYMENT CHARGE

Customer's monthly bills will be computed at the net rate, and there will be added to the total net bill a sum equivalent to 5% of such bill, which will be collected only from customers who fail to pay in full within ten days from date of bill.

RULES AND REGULATIONS

Service will be furnished under the Company's general RULES AND REGULATIONS, or TERMS AND CONDITIONS.

(The following clauses apply to Customers having a demand of 50 kilowatts or more.)

PRIMARY DISCOUNT

At the option of the Customer there will be a discount of 5% of the energy charge only on all monthly bills, provided the Customer owns and maintains any necessary transformers for reducing the voltage of the primary distribution, or the transmission system from which line the customer is served, and where the service is metered at the untransformed voltage.

FUEL CLAUSE

It is understood and agreed that in case the average cost of coal delivered in storage bins of the Company at its base load generating station for the territory served, including freight, switching and car service charges consumed at said generating plant, exceeds Two Dollars (\$2.00) per ton for any month, there shall be added for each such month to all net bills, based on the above Demand and Energy charges, an additional sum equal to one one-thousandth (1/1000) of one cent (1c) per kilowatt-hour for each one cent (1c) increase in the said cost of coal above Two Dollars (\$2.00) per ton.

It is also understood and agreed that in case the said average cost of coal so consumed for any month shall be less than One Dollar and Fifty Cents (\$1.50) per ton, then the Company shall credit to the customer for such month a sum equal to one one-thousandth (1/1000) of one cent (1c) per kilowatt-hour for each one cent (1c) decrease in the said cost of coal below One Dollar and Fifty Cents (\$1.50) per ton.

The Company shall include with the monthly bill for Demand and Energy charges the charges or credits due for such month under the terms of this clause, and the customer shall pay such charges or shall receive such credits within ten (10) days after date of the bill; and such charges or credits shall be net, bearing no discount.

ELECTRIC RATE SCHEDULE

RS-1

Residential Service

APPLICABLE

In towns and cities with population of 250 and above. (For list of all towns served under this rate see Index by Towns.)

AVAILABILITY OF SERVICE

Available for single phase service or three phase service, present facilities permitting, supplied as noted under Character of Service, to residences, individual apartments, and private rooming houses not exceeding 12 rooms, for one individual family unit, located on existing secondary lines of the Company, for all ordinary residential use of electric service, such as lighting, cooking, heating, refrigeration, air-conditioning and household appliances, including single phase motors of not over 5 horsepower individual rating, unless otherwise specifically permitted.

RATE

\$1.20 per month to include 16 KWH used per month
5.3 cents per KWH for the next 34 KWH used per month
3.4 cents per KWH for the next 50 KWH used per month
2.2 cents per KWH for the next 100 KWH used per month
2.0 cents per KWH for the next 200 KWH used per month
1.6 cents per KWH for all in excess of 400 KWH used per month
1.1 cent per kilowatt-hour for all off-peak water heating, (see standard for approved installation) when used in connection with approved electric range installation of 8 kilowatts or more where customer cooks electrically.

MINIMUM CHARGE

Single phase service not less than \$1.20 per month
Three phase service not less than \$5.00 per month

For all ordinary residential uses of electric service, including those listed under Availability of Service. When the investment to serve the customer is greater than normal and/or where special electrical equipment is required by the customer other than ordinary uses listed above, such as, but not limited to, large heating or motor loads, and/or when the use of the service will be seasonal or abnormal, the company reserves the right to require a monthly minimum greater than that shown above in the amount of 50 cents per month per HP or .746 KW for the connected load.

FULL ELECTRIC RESIDENTIAL SERVICE

Supplement to RS-1

FERS-1

APPLICABLE: To all domestic customers eligible for service under RS-1 whose principal energy requirements, including cooking, water heating, and heating of all dwelling space, are furnished by electric service.

RATE: Rate Schedule RS-1 shall remain in effect for the first 1,000 KWH used each month. All KWH used in excess of 1,000 per month (excluding off-peak water heating use) shall be billed @ 1.25¢ per KWH.

MINIMUM CHARGE: As set out in (RS-1) but in no event less than \$5.00 per month.

THIS SUPPLEMENT shall be subject to all Rules and Regulations, Terms and Conditions of Rate RS-1 in addition to those special requirements set out hereinabove.

BY PSC ORDER NO. 5607, DATED 9/29/72: Billing on the above Rate, including the Minimum, will be increased by .08588%.

DUE DATE OF BILL: Customer's payment will be due within 10 days from date of bill.

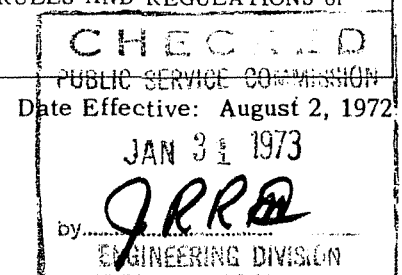
FUEL CLAUSE

If the average cost of fuel consumed by the Company's generating stations is in excess of or less than 36.492 cents per million BTU, as determined from the Company's three most recent monthly Operating Reports available, prior to the months of January, April, July and October, an additional charge or credit will be made on the kilowatt-hours purchased by the customer at the rate of .0012 cent per kilowatt-hour for each .1 cent or fraction thereof variation in the cost of fuel above or below 36.492 cents per 1,000,000 BTU, for the three months beginning with January, April, July and October each year.

RULES AND REGULATIONS: Service will be furnished under Company's general RULES AND REGULATIONS or TERMS AND CONDITIONS, applicable hereto. (See General Index)

Date of Issue: August 2, 1972

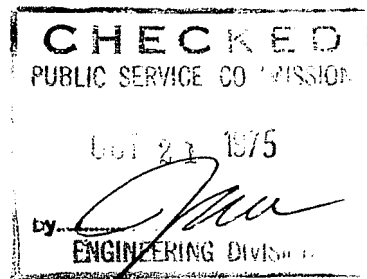
Issued by
A. Clay Stewart, Vice President
Lexington, Kentucky
Issued by authority of K.P.S.C. Order No. 5607



FUEL CLAUSE

If the average cost of fuel consumed by the Company's generating stations is in excess, of or less than 36.492 cents per million BTU, as determined from the Company's three most recent monthly Operating Reports available, prior to the months of January, April, July and October, an additional charge or credit will be made on the kilowatt-hours purchased by the customer at the rate of .00113 cent per kilowatt-hour for each .1 cent or fraction thereof variation in the cost of fuel above or below 36.492 cents per 1,000,000 BTU, for the three months beginning with January, April, July and October each year.

R



Date of Issue: September 19, 1975

Date Effective: September 19, 1975

J. W. Bradley
J. W. Bradley, Vice President
Lexington, Kentucky

Issued by Authority of P. S. C. No. 6, P. S. C. No. 6, P. S. C. No. 6